

REMARKS

This Response is submitted in reply to the non-final Office Action mailed on April 25, 2007. No fee is due in connection with this Response. The Director is authorized to charge any fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-441 on the account statement.

Claims 1, 3-8, 10 and 11 are pending in this application. Claims 2 and 9 were previously canceled. In the Office Action, Claims 1, 3-8, 10 and 11 are rejected under 35 U.S.C. §112 and 35 U.S.C. §103. In response Claims 1 and 11 have been amended. These amendments do not add new matter. In view of the amendments and for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

Amended independent Claims 1 and 11 recite, in part, an apparatus for preparing and distributing alimentary products formed of a portion of ice-cream or mousse contained between two bakery products, the apparatus comprising at least a rotating plate on which at least two dispensers of bakery products are placed; and control means suited to control the movement of elements of the apparatus, wherein the control means act to key a circular sector that rotates a toothed sector around a first pivot of the circular sector and rotates a compensator around a second pivot of the circular sector. The support for these amendments can be found in Applicants' Preliminary Amendment dated March 4, 2005 ("Specification") at page 5, lines 1-3; page 6, lines 2-6; and page 7, lines 10-14.

In the Office Action, Claims 1, 3-8, 10 and 11 are rejected under 35 USC §112, first paragraph, as failing to comply with the written description requirement. Specifically, the Patent Office alleges that there is no support in the original specification for the following amended claim language: "wherein the control means act on a pivot whereon there is keyed... the circular section" (Claim 1), "rotating plate on which at least two dispensers of bakery products rests" (Claim 1), "wherein said member that controls the movement of certain elements of the apparatus acts on a pivot... the circular section" (Claim 11), "a rotating plate on which at least two dispensers of bakery products rests" (Claim 11), etc. In response, Applicants have amended independent Claims 1 and 11 as summarized above.

For at least the reasons discussed above, Applicants respectfully submit that independent Claims 1 and 11, as currently amended, comply with the written description requirement and contain subject matter appropriately described in the specification.

Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. §112, first paragraph, of Claims 1, 3-8, 10 and 11 be withdrawn.

In the Office Action, Claims 1, 3-8, 10 and 11 are rejected as being unpatentable under 35 U.S.C. §103(a) over either one of U.S. Patent No. 4,094,236 to Holmes et al. ("*Holmes*"); GB 472,428 to Hirschson ("*Hirschson*"); or U.S. Patent No. 1,232,576 to Leich et al. ("*Leich*"). Applicants respectfully disagree with and traverse these rejections for at least the reasons set forth below.

Applicants respectfully submit that the cited references fail to disclose or suggest all the elements of the present claims. For example, *Holmes*, *Hirschson* and *Leich* all fail to disclose or suggest an apparatus for preparing and distributing products formed of a portion of ice cream, the apparatus comprising at least a rotating plate on which at least two dispensers of bakery products are placed. Instead, *Holmes*, *Hirschson* and *Leich* are all directed toward apparatuses having dispensing mechanisms comprising one supply chamber for housing the bakery products. In fact, at no place in *Holmes*, *Hirschson* and *Leich* do the cited references even mention the use of an apparatus having a rotating plate on which at least two dispensers of bakery products are placed. Additionally, *Holmes*, *Hirschson* and *Leich* all fail to recognize the advantages of an apparatus having a rotating plate comprising at least two dispensers of bakery products that allows the consumer to choose among the different bakery products available for preparation of, for example, an ice cream product. This feature allows for greater consumer satisfaction with the resulting end product and would not have been obvious in view of apparatuses comprising one chamber for housing the bakery products.

Applicants respectfully note that the last two Office Actions include identical language and arguments for asserting this obviousness rejection. See, Office Action mailed 12/12/06, page 2 and present Office Action mailed 4/25/07, page 3. In both cases, the Patent Office has alleged that Applicants arguments are moot in view of the new grounds of rejection. However, the obviousness rejection of Claims 1, 3-8, 10 and 11 has remained identical over the last two Office Actions. During this same period, Applicants have amended the independent claims and believe such amendments overcome the rejection. Moreover, Applicants respectfully submit that

the Patent Office has not provided specific support in the cited references for rejecting the current, amended claims. In light of the recent amendments to the claims, the Patent Office should see that the cited references fail to teach or suggest all the elements of independent Claims 1 and 11.

For at least the reasons discussed above, Applicants respectfully submit that independent Claims 1 and 11 as currently amended are novel, nonobvious and distinguishable from the cited references.


Accordingly, Applicants respectfully request that the rejections under 35 U.S.C. §103(a) of Claims 1 3-8, 10 and 11 be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY


Robert M. Barrett
Reg. No. 30,142
Customer No.: 29156

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